



Arconic Legal Department

201 Isabella Street
Pittsburgh, PA 15212

December 15, 2022

Via E-File and Email

Laura Evins, Esq.
National Labor Relations Board, Region 10
1130 22nd Street South
Birmingham, AL 35205-2885

RE: Arconic Inc., Alcoa, TN; Case No. 10-CA-305063

Dear Ms. Evins:

The undersigned counsel represents the Employer, Arconic Corporation (“Respondent” or “Company”), in connection with the above-referenced unfair labor practice charge filed by James Morrow of the United Steelworkers International Union (the “USW International” or “International Union”) on or about October 12, 2022 (“the Charge”). This letter represents the Company’s initial statement of position and response to the Charge.

While believed to be true and correct in all respects, this letter is not an affidavit and is not intended to be used as such, or for any purpose except as expressly provided and limited by existing law. The information contained herein represents the Company’s current understanding of the facts as of the date of this letter, and is made without prejudice to its right to present new, different and/or additional facts, defenses and/or arguments based on subsequently acquired information or evidence. This Position Statement is submitted in an effort to cooperate with the National Labor Relations Board’s (the “NLRB” or “Board”) investigation, but is subject to any and all privileges and confidences that may apply under federal or state law. The Company’s acknowledgement of the Charge and its cooperation with the Board’s investigation is not a waiver of any objections and/or defenses that the Company may otherwise have to the sufficiency of the Charge. Furthermore, this Position Statement is confidential, and the Company requests it be kept confidential to the maximum extent permitted by law.

As an initial matter, Respondent denies it violated the National Labor Relations Act (“the NLRA”) in any way. The Company responds to the specific allegations as follows:

Facts:

On (b) (6), (b) (7)(C) 2022, bargaining unit employee (b) (6), (b) (7)(C), assigned to the South Ingot Department at Arconic’s Tennessee Plant, was disciplined for violating safety rules or common safety practices and creating an unsafe condition in the workplace. **See Exhibit A (b) (6), (b) (7)(C) 2022 Notice and Record of Disciplinary Action).** Specifically, (b) (6), (b) (7)(C) spilled metal into

the plant basement while pouring a secondary crucible, which caused a fire. **See Exhibits B (Incident Report and Photo); C (Video footage of Metal Spill).**

Employee conduct at Arconic's Tennessee Plant is governed by the Employee Conduct Guidelines ("Conduct Guidelines") and Modified Disciplinary Process ("Disciplinary Process"). **See Exhibits D (Conduct Guidelines); E (Disciplinary Process).** The Conduct Guidelines require that all employees adhere to high standards with regard to job performance and conduct. **See Exhibit D.** Further, there are two categories of offenses for which discipline can be administered: (1) "intolerable offenses," which will result in an automatic five-day suspension subject to further disciplinary action up to and including discharge, and (2) "other offenses," which will be considered sufficient reason for disciplinary action ranging from a written verbal warning to suspension plus discharge. **See Exhibit D.**

The Disciplinary Process provides that the disciplinary path is as follows:

- Written Verbal Warning;
- Written Warning;
- 2 day layoff (if attendance related, it will be administrative time off);
- 5 day layoff (if attendance related, it will be administrative time off); and
- 5 day suspension subject to further disciplinary action (The outcome of the discipline can either be a discharge or a suspension of "x" amount of days. In the event that the outcome is a suspension, the next disciplinary occurrence would result in another 5 day [] suspension subject to further disciplinary action with the outcome more than likely a discharge).

See Exhibit E. Further, based on the nature of the offense, the location has the authority to skip levels of discipline as appropriate. **See Exhibit D** ("Because the circumstances of each incident of employee discipline are different, the Company reserves the right to impose the disciplinary actions that it finds to be appropriate in each case.").

On (b) (6), (b) (7)(C) 2022, (b) (6), (b) (7)(C) received a five-day suspension subject to further disciplinary action for the metal spill. **See Exhibit A.**

(b) (6), (b) (7)(C) had the following history of discipline, which led to this five-day suspension:

Discipline Level	Date of Offense	Date of Discipline	Nature of Offense	Notes
Written Warning	Week of (b) (6), (b) (7)(C) 2019	(b) (6), (b) (7)(C) /2019	Entering the (b) (6), (b) (7)(C) bathhouse	



Written Verbal	(b) (6), (b) (7)(C)/2021	(b) (6), (b) (7)(C)/2021	Disruptive behavior in the workplace (Over-alloyed the furnace)	Management inadvertently forgot about previous (b) (6), (b) (7)(C) 2019 discipline on record when issuing the written verbal from (b) (6), (b) (7)(C) 2021, thus resulting in less severe discipline for this offense
5-day suspension subject to further disciplinary action, affirmed at a 5-day total suspension	(b) (6), (b) (7)(C)/2022	(b) (6), (b) (7)(C)/2022	Leaving Company premises during working time without authorization	
5-day suspension subject to further disciplinary action, converted to a 30-day suspension	(b) (6), (b) (7)(C)/2022	(b) (6), (b) (7)(C)/2022 and (b) (6), (b) (7)(C)/2022	Violating safety rules or common safety practices, creating an unsafe condition, causing a safety threat to a co-worker, or not reporting an incident, including mobile equipment incidents Smoking in an unauthorized area	There were two separate incidents that were reviewed as part of the discipline determination (see below for more details)

See Exhibit F (b) (6), (b) (7)(C) Disciplines).

While the five-day suspension was being investigated, it was revealed in video footage that (b) (6), (b) (7)(C) was smoking in an unauthorized area on the same day as the metal spill, which is also a serious safety violation. **See Exhibit G (Video Footage of Smoking).** When questioned about whether (b) (6), (b) (7)(C) was indeed smoking, (b) (6), (b) (7)(C) stated: “I just messed up. Normally I smoke



outside. I was wrong by smoking in the chair.” See **Exhibit H (Notes from conversations with (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) 2022, p.4; and (b) (6), (b) (7)(C) 2022).**

As a result of this additional safety violation, the five-day suspension was converted to a thirty-day suspension. See **Exhibit A.** This is consistent with the terms of the Arconic-USW Collective Bargaining Agreement (“CBA”), which provides the following:

No dismissal, discharge, or disciplinary layoff in excess of five (5) days shall be imposed until a suspension period of up to five (5) days shall have elapsed. However, during the suspension period the Company may advise the employee and/or the employee’s union representative of the extent of any further action being considered[.]

Exhibit I (Article XI, Section 41(B) Arconic-USW CBA).

Though the Company does not have documentation of anyone who has committed the same infractions as (b) (6), (b) (7)(C) discipline was consistent with that of other employees who have committed similar serious safety violations. See **Exhibit J (Comparator Disciplines)** (showing that at least two employees have been terminated for similar offenses).

On (b) (6), (b) (7)(C) 2022 (and prior to the five-day suspension being converted to the thirty-day suspension), Ron Amos, SP Chair, USW Local 309, filed a grievance per the CBA contesting the discipline. **Exhibit K (First Grievance filed by Mr. Amos).** The Grievance Procedure at Arconic Tennessee is a five-step process, with the first three steps occurring at the plant level and the last two steps involving an International Union Representative and a member of the Corporate Labor Relations staff. **Exhibit L (Grievance Procedure from the Arconic-USW CBA).**¹

The grievance was answered at the third step of the grievance procedure on (b) (6), (b) (7)(C) 2022. See **Exhibit M (Third Step Answer for the grievance filed by Mr. Amos)** (“After a review of this situation, it has been determined that the 5-day subject to further disciplinary action had not yet been converted when the grievance was filed. It is the Company’s position that the disciplinary action language listed in Section 41. of the Master Agreement was appropriately followed. This grievance is respectfully denied.”). Subsequently, Mr. Amos filed another grievance per the CBA, this time contesting the 30-day suspension. **Exhibit N (Second Grievance filed by Mr. Amos).**

¹ The plant-level grievance meetings are the first, second, and third steps. The International Union/Corporate Labor Relations steps are the fifth step and arbitration. There is a fourth step in the procedure, but the parties mutually agreed to forego that step many years ago.



Argument:

The charges that were filed by the Union claim that “[w]ithin the previous six months, the Employer disciplined or retaliated against an employee(s) because the employee(s) joined or supported a labor organization and in order to discourage union activities and/or membership,” and “[w]ithin the previous six months, the Employer disciplined or retaliated against an employee(s) because the employee(s) filed charges or cooperated with the NLRB.”

The Company does not agree that it violated the NLRA by disciplining (b) (6), (b) (7)(C) was disciplined for two very serious safety infractions, and (b) (6), (b) (7)(C) discipline was applied fairly pursuant to the Company’s Conduct Guidelines and Disciplinary Process. There is substantial evidence to show that (b) (6), (b) (7)(C) committed these two safety violations (**See Exhibits B (Photo showing the metal spill); C (video showing the metal spill); G (Videos showing (b) (6), (b) (7)(C) smoking); H (Notes from meetings wherein (b) (6), (b) (7)(C) admitted that (b) (6), (b) (7)(C) shouldn’t have been smoking).** There were no considerations other than (b) (6), (b) (7)(C) previous disciplines and the aforementioned safety violations that led to (b) (6), (b) (7)(C) thirty-day suspension.

The Company believes the charge is ripe for deferral under NLRB policies, particularly Collyer Insulated Wire, 192 NLRB 837 (1971) as reaffirmed in United Technologies Corp., 268 NLRB 83 (1984) in view of the following:

- The Company and Union have a collective bargaining agreement, which is currently in effect.
- The agreement contains provisions for final and binding arbitration.
- The subject matter of the charge is encompassed by the terms of the agreement.
- The Company is willing to waive any contractual time limitations on the filing or processing of the grievance concerning the issues raised in the charge.
- The Company is willing to make reasonable efforts to try to process the grievances within a year.

However, the Company is unwilling to allow an Arbitrator to decide whether or not the Company violated the NLRA. It is the Company’s understanding that the Board now requires the parties to agree to this in a Collyer deferral if not specifically granted in the CBA. The CBA does not grant the Arbitrator the authority to do so and the Company is not willing to expand the authority of the Arbitrator in this way.

For all of the foregoing reasons, the Company believes that the allegations in this charge are without merit and urges the Board to dismiss this charge.

Please let me know if you have any questions or need additional information.



Very truly yours,

/s/ Ali J. Parker

Ali J. Parker
Employment Counsel

cc: Scott N. Dietrich, Assistant General Counsel, Arconic Corporation, Pittsburgh, PA
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